

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

HARRY JUSTIN OSIECKI,

Defendant-Appellant.

UNPUBLISHED

April 19, 2006

No. 259721

Livingston Circuit Court

LC No. 04-014351-FH

Before: Murphy, P.J., and O’Connell and Murray, JJ.

MEMORANDUM.

Defendant appeals by right his sentences for unlawfully driving away a motor vehicle (UDAA), MCL 750.413, operating while under the influence of liquor, MCL 257.625(1)(a), and driving with a suspended license, MCL 257.904(1). He was sentenced as a fourth habitual offender, MCL 769.12, to 58 to 120 months in prison for the UDAA conviction, and to concurrent 93-day sentences for the remaining offenses. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant rear-ended a stationary automobile at a stop light. The police found defendant slumped over the steering wheel in a daze. The odor of alcohol emanated from defendant, and he became argumentative when asked for paperwork. He stated that he had no license, but produced a vehicle registration. The registration revealed that the truck defendant was driving did not belong to him. The owner of the truck testified that he had left his keys in the truck when he parked it behind his business earlier that afternoon. He had not given defendant permission to use the truck. Defendant failed a field sobriety test, and a blood alcohol test administered after the police took defendant into custody showed a blood alcohol content of 0.15.

Defendant’s sole argument on appeal is that he is entitled to resentencing pursuant to *Blakely v Washington*, 542 US 296; 124 S Ct 2531; 159 L Ed 2d 403 (2004). We disagree. In *People v Claypool*, 470 Mich 715, 731 n 14; 684 NW2d 278 (2004), our Supreme Court held that *Blakely*, *supra*, is inapplicable to Michigan’s sentencing scheme. We are bound by *Claypool*,

supra. *People v Drohan*, 264 Mich App 77, 89 n 4; 689 NW2d 750 (2004).¹ *Blakely* does not entitle defendant to resentencing.

Affirmed.

/s/ William B. Murphy
/s/ Peter D. O'Connell
/s/ Christopher M. Murray

¹ Our Supreme Court granted leave to appeal in *Drohan*, limiting its review to whether *Blakely*, and *United States v Booker*, 543 US 220; 125 S Ct 738; 160 L Ed 2d 621 (2005), apply to Michigan's sentencing scheme. See 472 Mich 881 (2005). The appeal in *Drohan*, is still pending; thus, *Claypool* continues to control on this issue.